

REMARKS

Claims 28-63 are pending. Claims 28, 31, 41, 46-48, 53, 57 and 59-61 have been amended.

§ 112 Rejection

Claims 28-63 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants respectfully traverse this rejection.

The Examiner asserts that "is comprised" is indefinite. In order to expedite prosecution, "is comprised" was amended to "is" throughout the claims, specifically claims 28, 31, 46, 48, 57 and 59-61.

The Examiner has asserted a lack of antecedent basis for some terms in claims 41 and 57. Applicants have amended claims 41 and 57 to ensure proper antecedent basis for all terms.

The Examiner has rejected claims 41, 47, 53 and 60 for the use of the term "if appropriate." The term "if appropriate" has been removed in claims 41, 47, 53 and 60. Specifically, in claim 47, "if appropriate" was replaced by "if the gases are introduced into a second reactor with a moving catalyst bed." In claims 47 and 53, "if appropriate" was removed. In claim 57, "if appropriate" was replaced by "if the gases are introduced into a second reactor with a moving catalyst bed." In claim 60, "if appropriate" was replaced by "optionally."

Support for each amendment may be found in the claims and throughout the specification. Entry of the amendments is respectfully requested.

Each of the § 112 rejections have been addressed and remedied. The Examiner is respectfully requested to withdraw the § 112 rejection of claims 28-63.

§ 102(e) Rejection

Claims 28, 31-39 and 43-45 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Dubois (USP App Pub No 2003/0088124). Applicants respectfully traverse this rejection.

Dubois does not teach each feature of the presently claimed invention. For example, Dubois does not disclose the presently claimed catalyst.

Dubois is focused on a tellurium catalyst.

Claim 28 recites a catalyst comprising Sb (antimony). Catalysts comprising Sb are not described in Dubois.

Accordingly, the presently claimed process is not anticipated by Dubois.

Dubois only qualifies as prior art under § 102(e). Moreover, as evidenced in the Statement Concerning Common Ownership section, *supra*, application 10/526,879 (the present application) and application 10/093,265, Dubois (USP App Pub No 2003/0088124), were, at the time the invention of Application 10/526,879 was made, owned by Atofina.

According to MPEP § 706.02(I)(2), Dubois (USP App Pub No 2003/0088124) is now disqualified from being used in a rejection under 35 U.S.C. § 103(a) against the currently pending claims.

Accordingly, applicants respectfully request that the rejection of claims 28-39 and 43-45 as being anticipated, be withdrawn.

§ 103(a)

Claims 40-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dubois (USP App Pub No 2003/0088124). Applicants respectfully traverse this rejection.

Dubois only qualifies as prior art under § 102(e). Moreover, as evidenced in the Statement Concerning Common Ownership section, *supra*, application 10/526,877 (the present application) and application 10/093,265, Dubois (USP App Pub No 2003/0088124), were, at the time the invention of Application 10/526,877 was made, owned by the same company, Atofina, which has changed its name to Arkema.

According to MPEP § 706.02(I)(2), Dubois (USP App Pub No 2003/0088124) is now disqualified from being used in a rejection under 35 U.S.C. § 103(a) against the currently pending claims.

Accordingly, applicants respectfully request that the rejection of claims 40-42 as being unpatentable, be withdrawn.

Claims 46-63 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dubois (USP App Pub No 2003/0088124) in view of FR 2833005, as evidenced

by counterpart Dubois II (USP App Pub No 2005/0054880) . Applicants respectfully traverse this rejection.

As identified above, Dubois (USP App Pub No 2003/0088124) cannot be used in a rejection under 35 U.S.C. § 103(a) against the currently pending claims.

Dubois II is relied upon by the Examiner to allegedly teach the required cocatalyst at paragraph [0012]+. However, this does not remedy the deficiencies in the Examiner's rejection because Dubois (USP App Pub No 2003/0088124) cannot be used.

Accordingly, applicants respectfully request that the rejection of claims 46-63 as being unpatentable, be withdrawn.

Claims 29 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dubois (USP App Pub No 2003/0088124) in view of Borgmeier (USP App Pub No 2003/0187298) . Applicants respectfully traverse this rejection.

As identified above, Dubois (USP App Pub No 2003/0088124) cannot be used in a rejection under 35 U.S.C. § 103(a) against the currently pending claims.

Borgmeier is relied upon by the Examiner to allegedly teach that molecular oxygen is routinely used for oxidation. However, this does not remedy the deficiencies in the Examiner's rejection because Dubois (USP App Pub No 2003/0088124) cannot be used.

Accordingly, applicants respectfully request that the rejection of claims 29 and 30 as being unpatentable, be withdrawn.

Double Patenting

Claims 28-63 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 28-63 of copending Application No. 10/526,877.

Claims 28-63 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/497,210, now U.S. Patent No. 7,161,028.

The Examiner appears to assert that the conflicting claims are not patentably distinct because both sets relate to a method for the production of acrylic acid from propane by passing a mixture over a catalyst. However, the Examiner has ignored

that different catalysts are used. The selection of catalyst can have significant consequences on the result of the process, such as yield and selectivity.

The presently claimed invention, as set forth in representative claim 28, relies on a catalyst based on antimony without tellurium in its composition. In contrast, the claims of Application No. 10/526,87 and U.S. Patent No. 7,161,028 (USSN 10/497,210) relate to processes carried out on tellurium-based catalysts. Thus, there is no overlap of the catalysts compositions of Application No. 10/526,87 and U.S. Patent No. 7,161,028 (USSN 10/497,210) and the presently claimed catalyst. There is no suggestion or teaching found in Application No. 10/526,87 and U.S. Patent No. 7,161,028 (USSN 10/497,210) to modify the claims to have the presently claimed process with an antimony-based catalyst free of tellurium.

Accordingly, the claims of Application No. 10/526,87 and U.S. Patent No. 7,161,028 (USSN 10/497,210) do not render the presently claimed invention obvious.

Accordingly, the present double patenting rejection is respectfully requested to be withdrawn.

Conclusion

Favorable examination and further action in the form of a Notice of Allowance is earnestly solicited. If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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